

REMARKS

In the January 10, 2006 Office Action, claims 1-12 and 22-25 are rejected, and claims 13-21 are withdrawn from consideration as being directed to the non-elected invention. In response, claims 1, 6, 8-12 and 24 are amended, and new claim 26 is added. Claims 5 and 23 are cancelled.

Claim 1 is amended to correct the informalities noted in the Action and to further recite the composition containing an organic solvent and water. Support for these amendments are found in the examples of the invention in the specification. Claim 2 is amended to be consistent with claim 1. The remaining claims are amended to be consistent with the amendments to the independent claims.

The pending claims in this application are claims 1-4, 6-12, 19-22, and 24-26, with claims 1, 13 and 22 being independent. In view of these amendments, reconsideration and allowance are requested.

Rejection Under 35 U.S.C. § 112, Second Paragraph

The claims are rejected as being indefinite and on matters of form. As amended, the claims are submitted to be in proper form and to obviate these rejections.

Rejection Under 35 U.S.C. § 102(b)

Claims 1-4 and 6-12 are rejected as being anticipated by U.S. Patent No. 4,261,452 to Wysocki. The Action contends that Wysocki discloses each of the claimed features except for the written text of the instructions. The Action further indicates that the text of the illustrative medium is printed matter that carries no patentable weight.

Wysocki does not disclose the claimed invention as now recited in amended claim 1 since Wysocki does not disclose or suggest the claimed composition contained in the container or a composition capable of forming a layer that simulates stockings. As amended, the claims now clearly recite that the composition is contained in the container to obviate this rejection.

The Action suggests that the recitation of the composition for forming a stocking-like layer on the legs is an intended use that carries little or no patentable weight. As amended, the claimed composition is further defined by its utility, and thus, the recitation of the composition for use to form a stocking-like layer is a functional limitation to further define the invention. The composition is also defined as an aerosol composition, its film-forming properties to form a layer on the skin by spraying, and its properties to form a stocking-like layer or appearance in its applied form. Accordingly, the recitation in the claims is not merely a recitation of an intended use.

In view of these amendments and the above comments, claims 1-4 and 6-12 are not anticipated.

Rejection Under 35 U.S.C. § 103(a)

Claims 1-8, 10, 11, and 22-24 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Published Application No. 2003/0108487 A1 to Bara in view of U.S. Patent No. 4,261,462 to Wysocki. Bara is cited for disclosing a container in the form of a can or steel bottle comprising coloring agents. The Action contends that the claimed total solid content would have been obvious to one of ordinary skill in the art. The Action further suggests that the claimed recitation of forming a stocking-like layer is an intended use that carries little patentable weight. The Action also suggests that the structural unit including the container and illustrative medium do not provide any additional structural limitations to the claim.

The Action recognizes that Bara does not disclose an illustrative medium of the descriptive text for producing a stocking-like layer. Wysocki is cited for disclosing that is well known to provide an illustrative medium in the form of labels directly on a container. Therefore, the Action contends that it would have been obvious to one of ordinary skill in the art to include an illustrative medium on the container of Bara.

Bara and Wysocki either alone or in combination do not disclose or suggest the invention as now recited in the claims, since the cited art does not disclose a unit for forming a stocking-like layer where the unit includes a can containing a coloring agent selected from the group consisting of pigments, dyes, pearly lusters, silk powder and fillers and a cosmetic, an organic solvent, water and a propellant and an illustrative medium. The Action suggests that the recitation of forming a stocking-like layer is an intended use and carries no patentable

weight. As discussed above, this recitation is a functional limitation defining the nature of the composition, the uniform film-forming characteristics and properties of the composition and the aerosol container capable of applying the composition to the legs of the user to form a stocking-like layer. The composition as defined in the claims is a composition that forms the appearance of stockings on a person's legs. Bara discloses a sprayable pigmented composition that does not disclose or suggest a composition capable of simulating stockings on a person's legs. Accordingly, claims 1 and 22 are not obvious over the combination of Bara and Wysocki.

The present invention is directed to a sprayable composition for forming a foundation that can produce a stocking-like layer on the legs of the user. The conventional foundation cannot be applied to a wide surface area such as the legs to form a uniform layer. The propellant of conventional spray cosmetics contains volatile compounds which evaporate quickly, and thus, does not produce a uniform layer simulating stockings. Furthermore, conventional foundation compositions or cosmetics do not include sufficient solvents or carriers that remain liquid for a sufficient amount of time to produce the desired effect. In particular, the composition recited in claims 1 and 22 includes water and an organic solvent in an amount to retain the composition in liquid form for sufficient time to spread uniformly over the surface of the legs. Conventional foundation compositions do not contain water or contain insufficient amounts of water so that it is difficult to apply the composition on large surfaces. The compositions of the art of record are not capable of forming a stocking-like layer on legs.

The claims depending from claims 1 and 22 are also allowable for reciting additional features of the invention that are not disclosed or suggested in the art of record in combination with the features of the independent claim. For example, the cited art does not disclose the illustrative medium of claims 2, 3 and 4 in combination with claim 1. The cited art further fails to disclose the amount of the pigment of claim 6, the pigments of claim 7 or the coloring agents of claim 8 in combination with the features of claim 1.

The cited art also fails to disclose silk powder in an aerosol composition for forming the appearance of stockings on the legs of the user. The silk powder and the other pigments are used to specifically form the appearance of a stocking. The art of record provides no motivation or incentive to use silk powder in an aerosol composition or the appearance

obtained from the use of silk powder in the composition for producing a stocking-like layer. Accordingly, claim 9 is allowable over the art of record.

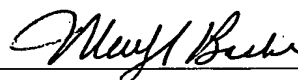
The art of record further fails to disclose the coloring agents of claim 10, the use of silica or aluminum powder as in claim 11 or the film forming polymer of claim 12, either alone or in combination with the features of claim 1. The cited art also fails to disclose the pigments of claims 24 or the film forming polymer of claim 25 in combination with the features of claim 22. Accordingly, the claims are allowable over the art of record.

Claims 1-12 and 22-25 are also rejected as being obvious over U.S. Published Application No. 2005/0142084 to Ganguly et al. Ganguly et al. is cited for disclosing a cosmetic composition that can be used as a leg paint.

Appended hereto is a Declaration signed by the inventor establishing a date of invention before the filing date of the Ganguly et al. patent application, thereby removing this published application as a reference. Furthermore, Ganguly et al. does not disclose or suggest the claimed invention as now recited in the claims. Ganguly et al. does not disclose a packaged unit including a container of a sprayable aerosol composition comprising the claimed coloring agents, cosmetic, organic solvent and water that is capable of producing a stocking-like layer on the legs of the user. Accordingly, the claims are allowable over this published application.

In view of these amendments and the above comments, reconsideration and allowance are requested.

Respectfully submitted,



Mark S. Bicks
Reg. No. 28,770

Roylance, Abrams, Berdo & Goodman, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036-1649
(202) 659-9076

Dated: May 6, 2006